

HOUSE BILL NO. 522

INTRODUCED BY R. LENHART

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT LIABILITY FOR DAMAGES RESULTING FROM THE INTRODUCTION OF A GENETICALLY ENGINEERED WHEAT VARIETY MUST BE ASSUMED BY THE COMPANY THAT HOLDS THE PATENT FOR THE GENETICALLY ENGINEERED WHEAT VARIETY; AND PROVIDING AN EXEMPTION FROM LIABILITY FOR THE COMPANY THAT HOLDS THE PATENT TO A GENETICALLY ENGINEERED WHEAT VARIETY WHEN A FARMER KNOWINGLY AND INTENTIONALLY GROWS GENETICALLY ENGINEERED WHEAT."

WHEREAS, genetic engineering artificially transfers genes at the cellular and molecular level between species that could never naturally breed and is therefore qualitatively different from traditional selective breeding; and

WHEREAS, many of the potential effects of genetically engineered wheat are unpredictable, long-term, or irreversible; and

WHEREAS, the biotechnology companies that invent and manufacture genetically engineered wheat are scientific experts concerning this technology; and

WHEREAS, the burden of ensuring that farmers and grain warehouse operators are not harmed by this technology should be placed on the company that holds the patent to the genetically engineered wheat variety; and

WHEREAS, genetically engineered wheat is substantially equivalent to wheat that is not genetically engineered in its ability to transfer its genetic traits that are genetically engineered or that are not genetically engineered to other wheat that is not genetically engineered through cross-pollination; and

WHEREAS, genetically engineered wheat cannot be successfully segregated from wheat that is not genetically engineered in current agronomic science, agricultural practices, and agricultural infrastructure; and

WHEREAS, the introduction of genetically engineered wheat may cause significant harm to domestic and foreign market acceptance and loss of value of Montana's wheat crop by Montana farmers and Montana's wheat-handling and processing industry.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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2 **NEW SECTION.** **Section 1. Definitions.** As used in [sections 1 and 2], the following definitions apply:3 (1) "Crop contamination" means any transfer of genetic material from a genetically engineered growing
4 crop, by cross-pollination or other means, to a nongenetically engineered growing crop.

5 (2) "Farmer" means a person responsible for planting a crop, managing a crop, or harvesting a crop.

6 (3) "Genetically engineered wheat variety" means wheat:

7 (a) altered at the molecular or cellular level by means that are not possible under natural conditions or
8 processes, including but not limited to:

9 (i) recombinant DNA and RNA techniques;

10 (ii) cell fusion;

11 (iii) microencapsulation;

12 (iv) macroencapsulation;

13 (v) gene deletion and doubling;

14 (vi) introduction of a foreign gene; and

15 (vii) change in the positions of genes, other than by a means consisting exclusively of breeding,
16 conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture;17 (b) made through sexual or asexual reproduction, or both, involving a genetically engineered wheat
18 variety that has been altered as described in subsection (3)(a) if the wheat possesses any of the altered
19 molecular or cellular characteristics of the organism described.20 (4) "Grain warehouse operator" means a person who owns, operates, or controls a grain warehouse
21 or terminal warehouse.22 (5) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private
23 corporation, the state or a subdivision of the state, a trust, an estate, or any other legal entity.24 (6) "Strict liability" means absolute liability for any damages that result from the use of genetically
25 engineered wheat varieties without respect to intention or negligence.

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27 **NEW SECTION.** **Section 2. Liability for damages resulting from introduction of genetically**
28 **engineered wheat variety -- exemption.** (1) Except as provided in subsection (3), the company that holds the
29 patent for the genetically engineered wheat variety is subject to strict liability for damages caused to farmers or
30 grain warehouse operators by the use of the genetically engineered wheat variety. Damages include but are

1 not limited to crop contamination, including:

2 (a) loss of any price premium that would have accrued to a farmer or grain warehouse operator of
3 nongenetically engineered products by contract or other marketing arrangement or that would have been
4 otherwise reasonably available to the farmer or grain warehouse operator through ordinary commercial
5 channels;

6 (b) any additional transportation, storage, handling, or related charges or costs incurred by the farmer
7 or grain warehouse operator that would not have been incurred in the absence of crop contamination;

8 (c) any judgment, charge, or penalty for which the farmer or grain warehouse operator of nongenetically
9 engineered products is liable because of breach of contract, including loss of organic certification, for failure to
10 deliver a crop or shipment free of genetically engineered material or for delivering a crop or shipment exceeding
11 any contractually agreed tolerances for the presence of genetically engineered material; and

12 (d) market price reductions incurred by farmers, resulting from loss of wheat exports caused by major
13 importing countries refusing to accept a genetically engineered wheat variety.

14 (2) An aggrieved person may bring action in the appropriate court against any person that causes harm
15 under this section. The prevailing plaintiff in an action under this subsection may recover reasonable attorney
16 fees and other litigation expenses as part of the costs.

17 (3) A farmer that knowingly and intentionally plants a genetically engineered wheat variety may not
18 make a claim for damages, which are the result of contamination, against the company that holds the patent for
19 the genetically engineered wheat variety.

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21 **NEW SECTION. Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified
22 as an integral part of Title 80, chapter 5, and the provisions of Title 80, chapter 5, apply to [sections 1 and 2].

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